

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

JOSEPH A. BOWDEN,

Petitioner,

vs.

JOSE VASQUEZ, Warden,

Respondent.

CIVIL ACTION NO.: CV205-244


ORDER

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Bowden asserts that Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), are clarifications of the Supreme Court's decision in In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Even if this is a correct statement of law, the fact remains that Blakely and Booker are not retroactively applicable to cases on collateral review. Bowden also asserts that his claims were not ripe for review until the Supreme Court announced its decision in Booker. This simply is not true. See United States v. Levy, 379 F.3d 1241, 1243 n.3 (11th cir. 2004) (noting that defendants have been making the general argument that a jury must find all of the facts regarding sentence enhancements since the United States Sentencing Guidelines came into being). Finally, Bowden asserts that the United States Supreme Court has granted certiorari in Burton v.

Waddington, Case Number 05-9222. Bowden alleges that the outcome of this case will have a great effect on his case. Bowden asks that the Court stay his case pending a decision in Burton. This Court is not inclined to stay the proceedings in this case. The Supreme Court of the United States recently granted certiorari in Burton, and it is not known when the Supreme Court will render a decision in that case.

Bowden's Objections are without merit. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Respondent's Motion to Dismiss (Doc. No. 4) is **GRANTED**. Bowden's petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241, is **DISMISSED**. The Clerk of Court is hereby authorized and directed to enter an appropriate Judgment of Dismissal.

SO ORDERED, this 1st day of August, 2006.


JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA